fense against the United States or to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both." *Held,* that when the United States enters into commercial business, it abandons its sovereign capacity, and is to be treated like any other corporation; therefore, though it absolutely owns the Panama Railroad Company, and is the only one profiting or losing by the railroad company's activities, a conspiracy to defraud the railroad company is not a conspiracy to defraud the United States. *Salas* v. *United States,* 234 Fed. 842.

The case came up on appeal to the Circuit Court of Appeals, Second District, from the District Court for the Southern District of New York, where the defendant was convicted of conspiracy to defraud the United States. *United States* v. *Burke, et al.,* 221 Fed. 1014. Upon appeal, the Circuit Court of Appeals reversed the decision of the District Court, finding that there was no conspiracy to commit any offense against the United States. In arriving at this conclusion the court relied strongly on the case of *Bank of United States* v. *Planters Bank,* 9 Wheat. 904, 6 L. Ed. 244, which had decided that a bank is not exempt from suit under the eleventh amendment because a part of its capital stock is owned by a state. In this case, MARSHALL, C. J., in the course of his opinion stated, "It is, we think, a sound principle that when a government becomes a partner in any trading company, it devests itself, so far as concerns the transactions of that company, of its sovereign character and takes that of a private citizen." Thus, in reliance on the preceding case, it has been held that the fact that South Carolina was a member of a certain railroad company did not oust the jurisdiction of the federal courts, *Louisville R. R. Co.* v. *Letson,* 2 How. 550, 551, 11 L. Ed. 375; that the Chesapeake & Ohio Canal Company was not entitled, by reason of the state being a shareholder, to exercise any larger rights than were given by its charter, *Brady* v. *State,* 26 Md. 302; that debts due to a bank wholly owned by the state are not entitled to priority under an insolvency law, *Fields* v. *Creditors,* 1 Sneed. 354. Two of the three judges, WARD and COXE, considered that the opinion of Chief Justice MARSHALL in *Bank of United States* v. *Planters' Bank, supra,* might be relied on as decisive of the present case, that the United States in operating the Panama Canal was engaged in a commercial business and had abandoned its sovereign capacity, and therefore a crime against the Panama Railroad Company was not a crime against the United States. CHATFIELD, J., dissenting, considered that the Panama Railroad Company was a department under the Isthmian Canal Commission, an agency of the United States, and therefore defrauding the Panama Railroad Company was not a crime against a private corporation, but a crime against the United States.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF LAWS—INTERSTATE COMMERCE.—The plaintiff railroad company is a consolidated corporation, existing by virtue of the consolidation, under concurrent acts of the states of

Tennessee, Mississippi and Alabama, of three independent and distinct railroad corporations created by and formerly operating solely within the respective states named. By the specific language of §12 of the Alabama REVENUE ACT an annual franchise tax based upon the amount of paid-up capital stock is exacted of "All corporations organized under the laws of this state." On the other hand, the franchise tax exacted of "all corporations organized under the laws of any other state, nation, or territory, and doing business in this state," was based upon the "actual amount of capital employed in this state." Plaintiff in error sues to recover certain sums of money which it had paid under protest, having been taxed on its entire capital stock. *Held,* the tax was properly levied. *Kansas City, Memphis & Birmingham R. R. Co.* v. *Stiles* (1916), 37 Sup. Ct. 58.

When the three distinct and independent corporations, each chartered by a separate state, consolidated under the laws of Alabama into one corporation, this corporation was as much subject to and dependent upon the will of that state as if the corporators had been citizens of the state. *Ashley* v. *Ryan,* 153 U. S. 436, 442, 14 Sup. Ct. 865, 38 L. Ed. 773; *Quincy Railroad Bridge Co.* v. *Adams Co.,* 88 Ill. 615. By receiving a grant of corporate existence from the state of Alabama, the corporation voluntarily made itself subject to the laws of that state and cannot now be heard to complain against an annual tax based upon the amount of capital stock of said corporation. The Railroad Company relied on the decision in *Southern Railway* v. *Greene,* 216 U. S. 400, 30 Sup. Ct. 287, 54 L. Ed. 536, 17 Ann. Cas. 1247, in which it was held that an additional franchise tax imposed upon foreign corporations and not upon domestic ones engaged in the same business, was a denial of the equal protection of the laws. But here the state has made no arbitrary classification. True, the consolidated corporation owns property outside of the state, while many other corporations chartered by the state are doing solely an intrastate business; but a franchise tax based upon the capital stock is not thereby rendered arbitrary. Nor does this tax amount to a regulation of interstate commerce. Where a state taxes a foreign corporation, doing an intrastate and also an interstate business, a certain percentage of its capital stock as a condition of continuing to do local business in the state such exaction may amount to an attempt to regulate interstate commerce. *Western Union Tel. Co.* v. *Kansas,* 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; *Pullman Co.* v. *Kansas,* 216 U. S. 56, 30 Sup. Ct. 232, 54 L. Ed. 378. But this is not the case of a state demanding a certain tax from a foreign corporation as a privilege of doing business in the state; it is the case of a state taxing a corporation chartered under its own laws, a corporation which had agreed to this taxation by filing its incorporation papers. A state has authority to tax a domestic corporation for the privilege of being a corporation, and such a tax is not necessarily invalid because measured by the capital stock, part of which may represent capital not subject to the taxing power of the state. *Kansas City, etc. R. R.* v. *Kansas,* 240 U. S. 227, 36 Sup. Ct. 261, 60 L. Ed. 617. See also 9 MICH. L. REV. 555.